

1 THE HONORABLE RICHARD A. JONES
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11 UNITED STATES DISTRICT COURT
12 WESTERN DISTRICT OF WASHINGTON
13 AT SEATTLE

14 CHESTER HENDERSON,
15 Plaintiff,

16 v.
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18 ABW TECHNOLOGIES, INC.,
19 Defendant.
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21 NO. 07-1426RAJ
22
23 ORDER
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25 **I. INTRODUCTION**

26 This matter comes before the court on Plaintiff's motion to continue the trial
date and related dates (Dkt. # 16). The Defendant requested oral argument, but the
court finds the motion suitable for disposition on the basis of the parties' briefing and
supporting evidence. For the reasons explained below, the court DENIES the motion.

27 **II. BACKGROUND & ANALYSIS**

28 This case was removed to this court on September 14, 2007. On April 7, 2008,
29 the parties filed a joint motion to continue (Dkt. # 12). Based on the parties'
30 representations regarding the Plaintiff's health problems, the court found good cause to
31 continue the trial date to April 27, 2009. *See* Order (Dkt. # 14).

32 ORDER - 1
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1 At 3:21 p.m. on the day that discovery was scheduled to close, Plaintiff moved
2 for a second continuance. As grounds for another continuance, Plaintiff contends that
3 because the “exact nature, extend, and cause of his injuries are uncertain,” “[i]t would
4 serve justice and be prudent for his condition to stabilize [to minimize] the conjecture
5 and speculation.” *See* Pltf.’s Mot. at 2-3. Plaintiff also served his first written
6 discovery that same day. Griffin Decl. (Dkt. # 20) ¶ 20.

7 Fed. R. Civ. P. 16(b)(4) provides that a court’s scheduling order “may be
8 modified only for good cause and with the judge’s consent.” A party demonstrates
9 good cause for modifying a scheduling order by showing that, despite the exercise of
10 due diligence, the scheduled deadlines cannot be met. *See Zivkovic v. Southern Calif.*
11 *Edison Co.*, 302 F.3d 1080, 1087-88 (9th Cir. 2002) (holding that party failed to
12 demonstrate good cause where a continuance was requested four months after the
13 scheduling order was issued, and plaintiff had not been diligent in complying with the
14 schedule). If the party seeking a modification did not exercise diligence, then the
15 motion for modification should be denied. *Id.*, 302 F.3d at 1087.

16 In this case, Plaintiff has not demonstrated good cause for a continuance. He
17 waited until the last day of the discovery period (more than eight months after the
18 scheduling order was issued) before requesting a continuance, without providing any
19 justification for waiting so long. Though he claims to need more information about his
20 medical condition, he has not explained why he has not been able to obtain adequate
21 information in the more than two years since his injury. Although Plaintiff has had
22 difficulty securing medical treatment due to insurance problems — *see* Henderson
23 Decl. (Dkt. # 17) ¶¶ 5-12 — these difficulties were apparent long before the day that
24 discovery was scheduled to close. Plaintiff also waited until the day that discovery
25 was scheduled to close before serving discovery requests. The timeline of this case
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1 suggests that the Plaintiff has not been diligent in complying with the court's
2 scheduling order.

3 Furthermore, a continuance at this point would prejudice the Defendant. Given
4 the deadlines set by court's scheduling order, the Defendant has already started
5 preparing a summary judgment motion. To continue the trial date and other pretrial
6 deadlines at this point would be burdensome to the Defendant.

7 In light of all of these circumstances, which show that the Plaintiff has not been
8 diligent, the court finds that the Plaintiff has not demonstrated good cause to modify
9 the current scheduling order.

10 **III. CONCLUSION**

11 For the reasons explained above, the Plaintiff's motion (Dkt. # 16) is DENIED.

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13 DATED this 29th day of January, 2009.

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The Honorable Richard A. Jones
United States District Judge